

(2023) 04 ATPMLA CK 0001

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: FPA-PMLA-189/LKW/2011

M/S Smridhi Sponge Ltd.

APPELLANT

Vs

Deputy Director Directorate Of
Enforcement, Lucknow

RESPONDENT

Date of Decision: April 5, 2023

Acts Referred:

- Prevention Of Money Laundering Act, 2002 - Section 2(1)(u), 3, 4, 5, 5(1), 8, 23, 24, 26
- Companies Act, 1956 - Section 108(1A)
- Income Tax Act, 1961 - Section 132(4), 143(3), 148

Hon'ble Judges: V. Anandarajan, Member; Rajesh Malhotra, Member

Bench: Division Bench

Advocate: Devesh Poddar, Shubham Aggarwal, Mrinal Kumar

Final Decision: Dismissed

Judgement

FPA-PMLA-189/LKW/2011

1. The present appeal has been filed by the appellant company, namely, Smridhi Sponge Limited under section 26 of the Prevention of Money-laundering Act, 2002 (PMLA) against the order dated 06.04.2011 passed by the Adjudicating Authority in Original Complaint (O.C.) No. 76 of 2010 under section 8 of the abovementioned Act.

2. Upon perusal of case records, it is seen that the present case belongs to the Madhu Koda group of cases, wherein the main accused is Shri Madhu Koda, the former Chief Minister of Jharkhand state. The allegation against Shri Madhu Koda is that during his tenure as Minister and Chief Minister, he misused his official position in connivance with Shri Binod Sinha and certain other persons and amassed assets in excess of his income from legitimate sources. It is inter alia alleged that Shri Binod Sinha, with the help of a Chartered Accountant Shri SK Naredi and other close associates, floated/acquired various companies and attempted to change the colour of the tainted money by way of fictitious share application money, or through other accommodation entries. The appellant company is alleged to be one of the companies in which the proceeds of crime generated by Sh. Madhu Koda were invested. The specific allegations and findings of the Ld. Adjudicating Authority with regard to the present appellant are to be found on pages 77 to 82 of the impugned order, which are reproduced below for ready reference:

"Def. No.13 (M/s Smridhi Sponge Pvt. Ltd.)

150. The Deputy Director writes that in December 2007 Sh. Binod Sinha had purchased 50% of shares of this company from Sh. Om Garg by paying Rs. 11 Crores and the

shares were parked in the name of M/s Lacky projects Pvt. Ltd. Remaining 50% of the shares of Sh. Om Garg was purchased by Manohar Paul. It is also further stated that M/s Creative Fiscal Services Ltd. paid Rs. 11 Crores to M/s Lacky Projects in March 2008 and purchased the shares of M/s Smridhi Sponge Pvt. Ltd. The Deputy Director also writes that as per the statement of Sh. Mrinal Kanti Paul, Director of M/s Creative Fiscal Service Ltd. before Income tax authorities on 17.02.2010 Binod Sinha is out of M/s Smridhi Sponge and his shares have been purchased by Manohar Paul for Rs. 12 Crores.

151. The Deputy Director in his written submission has submitted that in the financial year 2007-08 capital base of the company was increased from Rs. 10 Crores to 25 Crores and the investment in shares by Mr. Binod Sinha was made at this time. So proceeds of crime has gone to the company. It is argued that subsequent transaction between two individuals i.e. between Mr. Binod Sinha and Manohar Paul does not alter the proceeds of crime already infused in the company. It is further stated that return of tainted money (shares) by Sh. Samridhi Sponge to Binod Sinha is not established by documentary evidence.

152. In the written submissions made before us it is submitted that M/s Creative Fiscal Services has transferred its shares to the following four companies on 15.07.2009

Sl. No.	Transferee	No. of Shares	Amount Rs.
1	Keshav Tradecom Pvt. Ltd., Room No. 19, 6 th Floor, 23A, Netaji Shubhash Road Kolkata- 700001 Parmatma Mercantile Pvt. Ltd. Room No. 19, 6 th Floor, 23A, Netaji Shubhash Road, Kolkata- 700001 Dayalu Vincom Pvt. Ltd. Room No. 6A, 8 th Floor, 23A, Netaji Shubhash Road, Kolkata-700001.	2642835	2,64,28,350.00
2		2500000	2,50,00,000.00
3		2500000	2,50,00,000.00

4	Padmalya Dealcom Pvt. Ltd. Room No. 6A, 8 th Floor, 23A, Netaji Shubhash Road, Kolkata-700001 Total	2935000 10577835	2,93,50,000.00 10,57,78,350.00
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153. The photo copies of applications dated 11.07.2009 addressed by these four companies to the Board of Directors of M/s Creative Fiscal Services Ltd. requesting for sending them share transfer from 7B pursuant to provision of section 108 (1A) of the Companies Act 1956 are filed. The photo copies of the cheques issued by these companies in favour of M/s Creative Fiscal Services Ltd. are also filed. Each company has issued seven cheques dated 09.07.09 from newly opened current accounts in IndusInd Bank, stock Exchange Branch, Kolkata for the purpose. (Though in the letter dated 11.07.2009 the date of all these cheques for all these companies is mentioned to be 11.07.2009 photocopies of the cheques bear the date 09.07.2009). The cheques details are as under:

Name of the Issuer Company	A/C No.	Cheque Nos.
Keshav Tradecom	0515-AA0395-050	783783,783786 to 91
Dayalu Vincom	0515-AA0350-050	714805 to 714811
Pramatma Mercantile Pvt. Ltd.	0515-AA0347-050	714854 to 714860
Padmalya Dealcom Pvt. Ltd.	0515-AA0348-050	714760 to 714765, 714768,714769

154. We find several suspicious features with regard to these transactions as detailed hereunder:

1. All these four companies are operating from two rooms in the same address 23A, N.S. Road, Kolkata, as the copies of their letters dated 11.07.2009 addressed to Creative Fiscal indicate. Keshav Tradecom and Pramatama Mercantile are operating from Room No. 19 on the 6th Floor of the same building. (Incidentally Defendant No. 21, Majestic Vinicom is also operating from the same room). Other two companies are operating from Room No. 6A, 8th Floor at the same address. This is highly unusual raising serious doubts about genuine existence of these companies, for any genuine purpose.
2. The authorized signatory on the cheques for Keshav Tradecom and Pramatma Mercantile is the same person i.e. Krishna K. Parshuramka. Authorised signatory for Dayalu Vincom and Padmalya Vincom is the same person i.e. Virendra Kumar.
3. All the cheques by all these companies (except six cheques by Padmalya Dealcom i.e. cheques No. 714760 to 714765) clearly appear to have been written by the same person as the hand writing clearly shows. This is highly unusual.
5. Each company issued seven cheques from the same account (each cheque not exceeding Rs. 50 lakhs) on the very same day instead of one cheque each. Probably this

was to avoid attention of regulatory and enforcement agencies.

5. All these companies are using their current account in IndusInd Bank at same branch i.e. Kolkata stock Exchange Branch.

6. All these cheques clearly show that these are from new accounts. The term "new account" is printed on the cheques.

7. All these companies have applied to Creative Fiscal on the same date i.e. 11.07.2009. It is too much of a coincidence.

8. Letters of all these four companies dated 11.07.2009 are identical in language (except for the difference in the figures). The letter heads which appear to be computer printouts are identical in shape. Even the front of all these letters is identical.

155. The above facts clearly show that is a well-planned and coordinated action to avoid the long arms of law.

156. A collection evaluation of the suspicious features indicated above casts serious doubts about the activities of these companies.

157. Most notable feature which stares at our face is that all along it was presented before us that Binod Sinha (operating through Creative Fiscal), transferred his shares to Manohar Paul whereas in the written submission it is stated that the sale by Creative Fiscal was to these four Pvt. Ltd. Companies.

158. Further, the alleged share transfers efforts were initiated soon after the FIR was filed in this case on 02.07.2009. The time of alleged transfer is extremely important to draw the necessary inferences.

159. In view of the above facts we conclude that no bona fide transfer of shares has taken place. Assuming that the shares transfers have taken place these appear not to be with bona fide intentions and therefore should be treated as non est.

160. Secondly, the copies of documents produced before us merely speak of application to Creative Fiscal for transfer of shares. Whether really the shares have been transferred is not proven. Whether these companies are doing any business or are paper companies operating from single rooms is not clear. Did these companies have enough of balance for issue of these cheques? If they had, wherefrom these nondescript companies got so much money in their bank accounts? If presented, were these honoured? These very relevant questions remain unanswered raising a huge question mark on the genuineness of the claim of the alleged share transfers."

3. Based on their findings as above, the Ld. Adjudicating Authority concluded that proceeds of crime were still with the appellant company and the same were much more than the fixed assets amounting to Rs.6,65,16,129/- attached by the respondent Directorate. Consequently, the Ld. Adjudicating Authority proceeded to confirm the order of the Deputy Director attaching the fixed assets of the appellant company.

4. Aggrieved by the said order of the Adjudicating Authority, the appellant company has preferred the present appeal praying that the impugned order of the Adjudicating Authority be set aside, and also praying for consequential relief.

5. Detailed factual and legal submissions have been presented before us on behalf of the appellant. It is submitted that the appellant company was incorporated on 6.1.1995 and is engaged in the manufacture of sponge iron since 2004, with its plant situated at Jamshedpur. Initially, the company's shares were held by Sh. Om Prakash Garg, his family members, and his group companies. It is pointed out neither the appellant

company nor its directors, namely, Mr. Mrinal Kanti Paul, Mr. Tarun Kanti Paul, Mr. Tushar Kanti Paul (since expired), Mr. Om Prakash Garg, are accused in any scheduled offence.

6. It is further submitted that Mr. Binod Sinha and Mr. Vijay Joshi (persons who are alleged to have played a pivotal role in the Madhu Koda group of cases) were never directors of the appellant company, and they never held any shares in their personal capacity. Late Sh. Manohar Lal Paul, it submitted, was a businessman for more than three decades running a factory in Naini Industrial Area, Allahabad engaged in the manufacture of high-grade special smokeless fuel and Mr. Mrinal Kanti Paul, Mr. Tarun Kanti Paul, Mr. Tushar Kanti Paul who are accomplished engineers from IIT, are his sons. Sh. Manohar Paul family, it is submitted, never had any association or link with Mr. Binod Sinha, Mr. Vijay Joshi, Mr. Madhu Koda or any of the accused persons.

7. It is further submitted that the 1,05,78,350 shares of Appellant company held by Creative Fiscal were purchased by four group companies owned by Late Sh. Manohar Lal Paul in July 2009 after long negotiations, by making payment through banking channels and Creative Fiscal exited its investment in Appellant's shares. The share sale transactions were between the seller, Creative Fiscal and four buyer companies. Creative Fiscal received the entire consideration in its bank account from the four companies and the Appellant did not receive any money out of the said consideration. Thus, after July 2009, Creative Fiscal, Lacky Project Pvt. Ltd., Binod Sinha, Vijay Joshi or any other accused had no investment in Appellant. The entire money used for investment in shares of the appellant company was received back by Creative Fiscal/Lucky Projects as has been categorically admitted by Mr. Vijay Joshi in his statement dt 4.11.2009 which has been relied upon by Respondent. The Respondent Directorate, it is contended, did not trace the money in their hands though it was under a statutory duty to do so, but illegally attached legitimate property of the Appellant without jurisdiction.

8. Creative Fiscal, it is further submitted, is neither accused of any scheduled offence nor accused of money-laundering offence. No complaint under section 3 read with section 4 has been filed against it. Moreover, attachment against Creative Fiscal was set aside by the Ld. Authority vide the same impugned order. With regard to the sale of shares of the appellant company by Creative, it is submitted before us that the Ld. Adjudicating Authority disbelieved the purchase of shares of the Appellant company by four companies from Creative Fiscal in July 2009 as per the chart below and confirmed attachment on imaginary/ unsustainable new allegations.

No. of equity Shares	Amount Rs.	Cheque clearing date	Bank statement Page no.
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	Office no. 19. 6 th Floor, 23A, Netaji Shubhash Road Kolkata 700001	2642835	26428350	16.07.2009	16-17
Dayalu Vincom Pvt. Ltd.	---do---	2500000	25000000	16.07.2009	18-19
Parmatma Mercantile Pvt. Ltd.	---do---	2500000	25000000	16.07.2009	20-21
Padmalya Dealcom Pvt. Ltd.	---do---	2935000	29350000	16.07.2009	22-23
		10577835	105778350		

9. It is further contended that the Ld. Authority has relied upon the wrong fact that Sh. Mrinal Kanti Paul was a Director of M/s Creative Fiscal Services Ltd. and drew adverse inference based thereupon. This is contrary to the findings of Hon'ble Appellate Tribunal in para 7 of order dt. 2.9.2019 in FPA/PMLA/187/LKW/2011 in the case of Parbati Devcon Pvt. Ltd. wherein it was categorically held that Sh. Mrinal Kanti Paul is not a director of M/s Creative Fiscal Services Ltd. and the foundation of link between him and the main accused is based on the incorrect fact that he is a director of Creative Fiscal.

10. It is also contended that the Ld. Adjudicating Authority exceeded its brief and made new and baseless imaginary allegations. It alleged that investment in share capital of Appellant company by Creative Fiscal was out of tainted money and return of this money on purchase of shares of Smridhi by four group companies of Mr. Manohar Paul is not established by documentary evidence. In this regard it is pointed out that Mr. Vijay Joshi, in his statement recorded u/s 132(4) of I-T Act on 4.11.2019 which is relied upon by Respondent, has categorically stated:

"As on today, even Binod Sinha is out of Smridhi Sponge. His share was purchased by Manohar Pal in Rs. 12 crores (approx). The deal has been finalized only recently in July-August, 2009. I am nowhere involved in this deal."

11. From this statement of Mr. Vijay Joshi, it is contended, it is very clear that the shares were sold by Creative Fiscal to four companies. Further, the sale consideration was paid by four companies through banking channels and the same was credited to bank account of Creative Fiscal, share transfer was duly approved and recorded by Appellant in its statutory books/records from the name of Creative Fiscal to the name of the four companies. The four companies are group companies controlled and managed by Paul family. Therefore, their office addresses are same and they have bank accounts in the

same bank. They are neither accused of any scheduled offence nor have any allegations/ proceedings under PMLA been initiated against them. They are not paper companies. Thus, no adverse inference could have been drawn by Ld. Authority. The four companies had sufficient funds available with them on 9.7.2009 for payment of sale consideration of shares purchased. M/s Milestone Viniyog Pvt. Ltd. („Milestone”) which is a group company provided funds/ loans to these four companies for payment of sale consideration. These facts can be verified from the bank statements placed on record. As regards source of the source, Milestone had sufficient funds /sources to advance unsecured loan to these four companies. Milestone had raised share capital and premium thereon, of Rs. 15.59 crores during FY 2008-09 which is duly assessed/ admitted by the Income Tax Department in scrutiny assessment u/s 143(3)/148 of I-T Act for AY 2009-10. As regards presenting and payment of cheques given by four companies towards sale consideration to Creative Fiscal on 11.07.2009, it is submitted that all the cheques were presented by Creative Fiscal immediately to its bank and they were debited in the bank accounts of four companies on 16.07.2009 and the amounts were credited to the bank account of Creative Fiscal.

12. It is also pointed out to us that while confirming attachment of assets of Lacky Projects Pvt. Ltd., the Ld. Adjudicating Authority in para

149 of the same order has held that the sale proceeds of 50% shares of Smridhi represent the proceeds of crime. The relevant part of the order reads as reproduced follows:

“149. Now coming to Def. No. 12 i.e. M/s Lacky Projects Pvt. Ltd. The Deputy Director has discussed the matter at page 205 of the complaint. He states that Rs. 21 Crores was transferred to the bank account of this company by Binod Sinha/Vikash Sinha during the period 24.08.2007 to 28.12.2007. This was by way of accommodation entries through paper companies (vide reference at Vol. IV page 509). Besides Rs. 11 crores were received from M/S Creative Fiscal as sale proceeds of 50% shares of M/S Smridhi Sponge Ltd. (vide reference Vol. IV page 509}. These obviously represent proceeds of crime. As against the same we find that total fixed assets of Rs. 21,70,071/- has been attached. The attachment order is confirmed.”

13. From the above, it is submitted, it is crystal clear that on the date of attachment on 10.11.2010, Creative Fiscal was not holding any shares of Appellant as it has sold its investment in shares in July 2009 to the four companies and received sale consideration in its bank account from their bank. That being the case, the sale consideration received by Creative Fiscal and, in turn Lacky Project, would be the proceeds of crime as held by Hon”ble Andhra Pradesh High Court in its judgment dt. 4.3.2011 in B. Rama Raju vs UOI Writ Petition Nos. 10765, 10769 and 23166 of 2010.

14. It is also submitted that the provisional attachment order attaching fixed assets of Rs. 6.65 crores of the Appellant company was passed by Respondent on the allegation that Mr. Vijay Joshi in statement given under I-T Act stated that Sh. Binod Sinha had invested Rs. 10,57,78,350/- in acquiring 50% share. When the Appellant demonstrated before the Ld. Authority that 50% shares held by Creative Fiscal were purchased by four companies owned by Sh. Manohar Paul, Ld. Authority exceeded its brief as already elaborated. The Ld. Authority had no jurisdiction to exceed its brief and make new baseless allegations in order to confirm the attachment. Ld. Authority was to adjudicate whether the Respondent, on the day of attachment had material in its possession on the basis of which it could have had reasons to believe that the Appellant was in possession of proceeds of crime. Thus, the impugned order qua attachment of properties of the Appellant is wrong, illegal, without jurisdiction and liable to be set aside.

15. Based on the above submissions, the appellant contends, it is clear that since Appellant was not in possession of any amount out of alleged proceeds of crime and its asset could not have been attached. The respondent was not in possession of material on the basis of which could have held the requisite belief in terms of the provisions of section 5(1) of the Act. Thus, the attachment of assets of the Appellant is wrong, illegal, against the provisions of law, and void ab initio.

16. Without prejudice to the above submissions and as an alternative plea, it is contended by the appellant that in the present case, admittedly, the total amount of alleged proceeds of crime, i.e., disproportionate assets in the hands of accused Mr. Madhu Koda as quantified in the charge sheet is Rs. 1,40,10,333/- and properties attached in the hands of the accused are more than the total amount of proceeds of crime of Rs. 1.4 crore as is evident from Annexure-A of the Provisional Attachment Order. When the entire proceeds of crime are already attached in the hands of accused Mr. Madhu Koda, Mr. Binod/Sunil/Vikas Sinha etc., the Respondent Directorate could not have attached legitimate properties of Rs. 6.65 crore owned by the Appellant because they do not represent proceeds of crime as submitted in paras above and the Respondent has no power to attach properties more than the proceeds of crime. Reliance is placed by the appellant in this context on judgment dt. 6.5.2019 of the Appellate Tribunal-PMLA (since merged into this Appellate Tribunal) in the case of Sh. Baldev Raj Arora vs Dy. Director, ED, Lucknow in FPA/PMLA/2568/LKW/2019 wherein it was held that the Respondent Department is not entitled to attach immovable property more than the value of proceeds of crime.

17. Our attention is drawn in this to the following observations contained in the judgment dt. 27.07.2022 passed by the Hon'ble Supreme Court in Vijay Madanlal Choudhary & Ors vs. Union of India & Ors. SLP Crl No. 4634 of 2014:

"31. The "proceeds of crime" being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act— so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money-laundering under Section 3 of the Act."

18. Based on its submissions as above, the appellant prays that attachment of its properties may be quashed/set aside and the appeal be allowed.

19. The Respondent Department, on the other hand, strongly contested the averments and submissions made on behalf of the appellant on factual as well as legal grounds. To begin with, the Respondent has reiterated the broader allegations contained in the impugned order that Shri Madhu Koda, during his tenure as Minister and Chief Minister, had amassed assets in excess of his income from legal sources by abuse of public office; that the illegal money earned by him was channelized into various assets in his own name as well as in the names of his associates and into certain companies which were floated for the purpose of investing the illegal earnings, and that Shri Binod Kumar Sinha, Shri Sunil Kumar Sinha, Shri Vikas Sinha and others played a pivotal role in this process along with Shri S.K. Naredi, Chartered Accountant who organized accommodation entries through various companies which included Lacky Projects Private Limited and Creative Fiscal Services Limited whose names figure in the present appellant's case. It was also reiterated that the proceeds of crime generated were invested in several companies of which the present appellant is one.

20. Referring to the appellant company's contention that on the date of attachment, no investment by Shri Binod Sinha was existing in the company and, therefore, no proceeds of crime can be said to be still subsisting in the company in the form of any assets, it is submitted that the statement of the appellant company's director, Shri Mrinal Kanti Paul indicated the various sources of funds, including by way of accommodation entries from paper companies located in Kolkata. Family members of Mr. Paul were directors in those paper companies.

21. Strong reliance is placed by the respondent on the factual findings contained in the impugned order of the Ld. Adjudicating Authority as well as the conclusions based thereon.

The Appellant, it is contended by the respondent, was one of the frontline companies used by Mr Binod Sinha to park and launder his tainted money. Statements made by various persons before the authorities clearly reflected the use of money for laundering and also the participation of the applicant company in the offence of money-laundering. There were reasons to believe that Mr. Binod Sinha infused the proceeds of crime into the appellant company through a circuitous route which establishes the fact that the appellant company was used in layering of the tainted money.

22. It is reiterated before us by the Respondent that the capital base of the appellant company was increased by Rs. 15,00,00,000 in the year 2007-2008 and substantial investment was made by Mr Binod Sinha precisely during this period. Furthermore, the impugned order, specifically para 152 and para 153, reflect that share purchase of the appellant company by four companies is highly suspicious and perusal of records indicates that these transactions were sham.

23. It is contended that the material on record satisfies the condition laid down in section 5(1). In view thereof, it is contended by the Respondent that it was incumbent upon the Appellant to indicate the sources of income, earning or assets out of which or by means of which the property attached has been acquired, the evidence on which he/it relies and other relevant information and particulars, to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government. The above information would have enabled the Adjudicating Authority to make a determination on which of the properties in question are properties „involved in money-laundering". and which

are not. The Appellant failed to bring adequate material on record to discharge the burden cast upon them under the PMLA and has failed to do so even in the memorandum of appeal. It is strongly contended that the Appellant herein has completely failed to discharge its burden of proof under Sections 23 and 24 of PMLA. Considering the number of inter-connected transactions in the instant case, our attention is drawn to the text of Section 23 which states:

"23. Presumption in inter-connected transactions.—Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under section 8 or for the trial of the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court, be presumed that the remaining transactions from part of such inter-connected transactions."

24. Our attention is also drawn to the Second Proviso to Section 5 of the PMLA which states:

"Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorized by him for the purposes of this section has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money laundering is not attached immediately the non-attachment of the property is likely to frustrate any proceedings under this Act."

25. It has been submitted that this proviso allows the attachment of property involved in money laundering even if such property is in the possession of a person not charged with having committed a scheduled offence under the PMLA.

26. To sum up, it is the contention of the Respondent that the impugned order which confirms the provisional attachment Order of the Deputy Director dated 10.11.2010 is sound, well-reasoned, justified and completely impregnable as it amply satisfies the reason to believe "test under the PMLA, and the same was confirmed by the Ld. Adjudicating Authority after carefully considering all the material evidence on record. In light of these circumstances, it is submitted that the instant appeal is liable to be dismissed with exemplary costs.

27. We have given careful consideration to the contents of the impugned order, the material before us, and the rival contentions of the parties. Our findings and observations with regard to the various contentions raised on behalf of the parties are as set out in the succeeding paragraphs.

28. Firstly, with regard to the contentions that none of the members of the Paul family, including Mr. Mrinal Kanti Paul, Mr. Tarun Kanti Paul, Mr. Tushar Kanti Paul who were managing the affairs of the appellant company had any association or link with Mr. Binod Sinha, Mr. Vijay Joshi, Mr. Madhu Koda or any of the accused persons, that after July 2009, Creative Fiscal, Lacky Project Pvt. Ltd., Binod Sinha, Vijay Joshi or any other accused had no investment in Appellant company, that the entire money used for investment in shares of the appellant company was received back by Creative Fiscal/Lucky Projects, and also that Creative Fiscal is neither accused of any scheduled offence nor accused of money-laundering offence and no complaint has been filed against it, we do not find any merit in these contentions. As has been categorically held by the Apex Court in *Vijay Madanlal Choudhary & Ors. Vs. UoI & Ors.*, SLP(Crl.) No. 4634 Of 2014, SC (para 65), the precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of

criminal activity relating to a scheduled offence. The sweep of Section 5(1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence) if he is involved in any process or activity connected with the proceeds of crime. Furthermore, as pointed out by the appellant, the presumption in inter-connected transactions under section 23 is also against the appellant.

29. We also do not find any merit in the contention of the appellants that since the payments in respect of the share transactions were made through banking channels and Creative Fiscal received the entire consideration in its bank account, therefore, the transactions were genuine and above board. It is well known that one of the fundamental features of the companies involved in the entry-providing business is that on paper, they adhere meticulously to all legal procedural requirements under various laws, including the Companies Act, the I-T Act etc. Further, entry-providing operations are always carried out through banking channels. Indeed, Shri S.K. Naredi, Chartered Accountant and the alleged brain behind the web of transactions involved in the Madhu Koda group of cases, in his statement which has been extracted in para-19 (page-17) of the impugned order, stated as follows:

"Q.23 Please give details regarding manner in which such accommodation entries are arranged through Kolkata based companies.

Ans. Some chartered accountants/entry operators maintain several files of companies registered in Kolkata through which they provide accommodation entries to various beneficiaries. These companies exist only on paper and no business activity is carried on by them. The CA/Entry operator regularly files IT return of these companies. Whenever a business concern wants accommodation entries arranged in their books of accounts in the form of share capital/unsecured loan these CA/Entry operators are approached Cash is given by the business concern/beneficiary to these CA/Entry operators and in return they issue cheque/DD in the name of the beneficiary from one of such paper/investment companies in which balance is available. The cash so received by these CA/Entry operators are generally routed in their paper/investment companies through banking channels.

As a result the beneficiary is able to induct his undisclosed income in his regular books of account as share capita/unsecured loan in the name of these paper/investment companies. The CA/Entry operators receives commission/service charges in return which generally varies between 2 to 10 4% of the cheque amount."

30. Accordingly, the above contentions of the appellant are hereby rejected.

31. The next contention of the appellant is that the share sale transactions were between the seller, Creative Fiscal and four buyer companies. Creative Fiscal received the entire consideration from the four companies and the Appellant did not receive any money out of the said consideration. We are not persuaded by this argument either. It is pointed out by the respondent that proceeds of crime were infused into the appellant company through a circuitous route for the purpose of layering the tainted money. It is the contention of the respondent that in the financial year 2007-08 capital base of the company was increased from Rs. 10 cr. to Rs. 25 cr. and the investment in shares by Mr. Binod Sinha was made at this time. The appellant company, while claiming that it did not benefit in any way from the transaction between Creative Fiscal and the four companies, seeks to gloss over this important fact. It is important to bear in mind that the definition of "proceeds of crime" under section 2(u) of the Act takes within its ambit not only property derived or obtained directly as a result of criminal activity relating to a scheduled offence but also the property derived or obtained

indirectly as a result of criminal activity relating to a scheduled offence, and also the value of such property. These arguments, therefore, do not help the appellant in discharging its burden of proving that proceeds of crime were not involved.

32. Next, it is contended that the Ld. Authority relied upon the wrong fact that Sh. Mrinal Kanti Paul was a Director of M/s Creative Fiscal Services Ltd. and drew adverse inference based thereupon. It is also contended that this is contrary to the findings of Hon'ble Appellate Tribunal in the case of Parbati Devcon Pvt. Ltd. wherein it was categorically held that Sh. Mrinal Kanti Paul is not director of M/s Creative Fiscal Services Ltd. We find that this contention has no fundamental bearing on the issue at hand. It has no doubt been mentioned by the Ld. Authority that the Deputy Director, in his complaint has written that as per the statement of Sh. Mrinal Kanti Paul, Director of M/s Creative Fiscal Services Ltd. before the Income Tax Authorities on 17.02.2010, Binod Sinha is out of M/s Smridhi Sponge and his share have been purchased by Manohar Paul for Rs. 12 Crores.

However, none of the subsequent discussions or conclusions is based on that fact of Sh. Mrinal Kanti Paul being a Director of the said company or otherwise. The conclusions of the Ld. Adjudicating Authority stand on the foundation of independent evidence which has been discussed at length in the order. Therefore, this contention also does not assist the appellant in any manner.

33. It is next contended that the Ld. Adjudicating Authority exceeded its brief and made new and baseless imaginary allegations insofar as it concluded that the investment in share capital of the Appellant by Creative Fiscal was out of the tainted money and the return of this money on the purchase of shares of Smridhi by the four companies is not established by documentary evidence. The questions raised and the conclusions drawn by the Ld. Authority as to whether the shares of the appellant were really transferred by Creative Fiscal to the four companies, whether the four companies were doing any business or were only paper companies, whether they had sufficient balance to issue the cheques, whether the cheques were ever presented, and if so, whether they were honoured, etc. (see para __ above), have been assailed and called into question. Having perused the contents of the impugned order thoroughly, we do not find any case of the Ld. Adjudicating Authority exceeding its brief. Under Section 8 of the Act, the Ld. Adjudicating Authority is mandated, after considering the reply to the notice issued by it, after hearing the aggrieved person and the Directorate, and after taking into account all relevant materials placed before it, to record a finding whether all or any of the properties in the notice issued under the Section are involved in money laundering. In passing the impugned order, the Ld. Authority has only fulfilled its mandate through a detailed, speaking order. Raising of certain questions by the Ld. Adjudicating Authority in their order and proceeding to answer them based on the evaluation of the evidence before them is merely a judicious process of arriving at relevant conclusions. We, therefore, do not find any fault with the process through which the Ld. Adjudicating Authority decided the matter before them. Moreover, the issues discussed by them such as the common address of the companies, same authorized signatory, having accounts in the same bank, same handwriting on cheques, similar transactions undertaken on identical dates, the identical language of the letters etc., were relevant and germane to the question of the genuineness of the alleged share transactions. The further contentions of the appellant in this regard, namely, that the sale consideration was paid by four companies through banking channels, that the same was credited to the bank account of Creative Fiscal, and that the share transfer was duly approved and recorded by the Appellant company in its statutory books/records from the name of Creative Fiscal to the name of the four companies, that the four companies are group companies controlled and managed by Paul family, and, therefore, their office

addresses are the same, bank accounts are in the same bank, that they are not paper companies, and are not accused of either any scheduled offence or the offence of money-laundering etc., have already been dealt with elsewhere in this order and are not repeated here for the sake of brevity.

34. It is also pointed out to us that while confirming the attachment of assets of Lacky Projects Pvt. Ltd., the Ld. Adjudicating Authority in para 149 of the same order has held that the sale proceeds of 50% shares of Smridhi Sponge represent proceeds of crime. From the above, the appellant submits, it is crystal clear that on the date of attachment, i.e., 10.11.2010, Creative Fiscal was not holding any shares of the Appellant as it has sold its investment in shares in July 2009 to the four companies and received sale consideration in its bank account from their bank. That being the case, the sale consideration received by Creative Fiscal and, in turn, by Lacky Project, would be the proceeds of crime.

Judgment of the Hon"ble Andhra Pradesh High Court in its judgment dt. 4.3.2011 in B. Rama Raju vs UOI Writ Petition Nos. 10765, 10769 and 23166 of 2010 is cited in this regard. This contention of the appellant pre-supposes that the transactions between Lacky Projects and Creative Fiscal and in turn between Creative Fiscal and the four companies were genuine and bonafide since they were through bank transactions and the necessary procedural requirements were followed. This proposition has already been discussed and rejected in para-__ of this order. Accordingly, this contention of the appellant also does not hold any merit.

35. The final contention of the appellant which is without prejudice to the main submissions already discussed at length in the foregoing paragraphs, and which has been presented as an alternative plea is that, in the present case, admittedly, the total amount of alleged proceeds of crime (disproportionate assets) in the hand of the accused Mr. Madhu Koda as quantified in the charge sheet is Rs. 1,40,10,333/- only, and properties attached in the hands of the accused are more than the total amount of such proceeds of crime of Rs. 1.4 crore as is evident from Annexure A of the Provisional Attachment Order. When the entire proceeds of crime are already attached in the hands of accused Mr. Madhu Koda, Mr. Binod/Sunil/Vikas Sinha etc., the Respondent Department, it is contended, could not have attached properties of Rs. 6.65 crore owned by the Appellant. The Respondent has no power to attach properties more than the proceeds of crime. Reliance is placed by the appellant in this regard on the judgment dt. 6.5.2019 of the Appellate Tribunal-PMLA in Baldev Raj Arora vs Dy. Director, ED, Lucknow in FPA/PMLA/2568/LKW/2019.

36. The Ld. Counsel for the Respondent Directorate, on the other hand, submitted before us that proceeds of crime in the present case are not limited to Rs.1.04 crores and there is nothing on record to show that this is the case.

37. We have given careful consideration to this alternative contention of the appellant. We find that this issue has been discussed in detail in the impugned order of the Ld. Adjudicating Authority. In para-95 of the said order, the Ld. Authority noted as below:

"95. This case involves a number of factual and legal issues. Some issues are common to all Defendants. Some are common to some Defendants. Identical arguments have been presented in respect of number of Defendants. To avoid repetitive references and overlapping we propose to identify them before proceeding further in an effort to find answers to them. The conclusions we will reach will be applied to individual cases of Defendants. The broad issues which call for answers are:

A.

B. Whether the total quantum of attachment should be limited to the quantum of disproportionate assets of Sh. Madhu Koda (about Rs.1.40 crores) computed in the charge sheet filed, on the reasoning that that much is the proceeds of crime detected"

38. The answer to the above question which the Ld. Authority posed before itself is provided in paragraphs 101 to 104 of the order which too, are reproduced below for reference:

"101. Coming to issue B, there is no provision in PMLA which enjoins limiting the attachment of proceeds of crime to the quantum worked out in the charge sheet filed for the scheduled offence. There are many offences where the quantum of money generated out of the scheduled offence is not relevant for the purpose of the charge sheet and therefore may not be mentioned there. For various offences when police or any other concerned authorities file charge sheet there may not be any reference to money earned out of such crimes because such authorities for the purpose of the Act under which they would be acting may not consider it relevant to do so or may not find it necessary to investigate the money generation aspect. Even if they do their investigations into the money generation aspect may not be exhaustive but may be only incidental. But if the Director of Enforcement on his own investigation finds more money to have been earned out of such scheduled offences than shown in the charge sheet he is entitled to attach the whole of such proceeds of crime. There is no bar in PMLA for doing so. The Director's jurisdiction is not confined to tip of the ice-berg but the whole of the ice berg, above and under water.

102. Para (b) of section 5(1) has a limited relevance in so far as it puts a condition for provisionally attaching the property. Once that condition is satisfied its relevance, including the quantum of proceeds from the scheduled offence, if any, comes to an end.

103. Further, as held by the Hon'ble Bombay and Andhra Pradesh High courts it is permissible to attach a property if it represents proceeds of crime even if the person in possession of the property was not charged for any scheduled offence. In such a case there is no charge sheet against him to serve as a point of reference.

104. In view of the above discussion we hold that attachment order cannot be faulted on the ground that the total quantum of attached properties exceeded the disproportionate assets computed in the charge sheet filed against Sri Madhu Koda."

39. Having given careful consideration to the issue raised in this alternative contention of the appellant, we find ourselves in full agreement with the Ld. Adjudicating Authority on this issue. Insofar as the investigation of the offence of money laundering, including the quantum thereof under the PMLA is concerned, the findings recorded in the charge sheet filed in the scheduled offence are only the starting point or the trigger and not the final and binding conclusions. Otherwise, there would be no need for a separate and specialized authority bestowed with vast investigative powers to look into the offence of money laundering separately if they were to merely rely on the findings of the agency which investigated the scheduled offence. The focus of the agency investigating the predicate (scheduled) offence will obviously be on the investigation of that offence. Moreover, as pointed out by the Ld. Adjudicating Authority, not all offences are amenable to ready quantification of monetary gain, that too, by an agency not specialized to carry out financial investigation. It is only after a detailed financial investigation is carried out by a specialized agency that the financial implication of the offence will become clear in full measure.

40. In the present case, a mere perusal of the impugned order reveals that though the initial trigger or the starting point of the PMLA investigation may have been the FIR

filed by the State Vigilance Department of Jharkhand under the Indian Penal Code, 1860 and Prevention of Corruption Act, 1988 wherein the proceeds of crime were quantified at Rs.1,40,10,333/-, the investigation carried out by the respondent Directorate revealed the actual quantum of proceeds of crime generated by the individuals and entities belonging to the group was exponentially higher than that amount.

41. In this context, it is not out of place to mention that provisional attachment based on reason to believe that any person is in possession of proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to the confiscation of such proceeds of crime is an interim measure to prevent the person from alienating or encumbering the property in any manner until his culpability under the Act is finally established by a court of competent jurisdiction. It does not prevent the person interested in the enjoyment of the property from enjoying it. Such provisional attachment of property can be done by the director or other officer specified under section 5 on the basis of "reason to believe" on the basis of "material in his possession". Considering the contents of the impugned order we are of the view that the same constituted sufficient material for the director or other competent officer to have the requisite reason to believe.

42. That being the case, we do not find any merit in this alternative contention of the appellant either and, accordingly, the same is also dismissed.

Consequently, the appeal is also hereby dismissed..

No costs.